

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 19-CR-025-JDP

ALEXANDER KAWLESKI,

Madison, Wisconsin

January 28, 2021

Defendant.

1:30 p.m.

* * * * *

STENOGRAPHIC TRANSCRIPT OF VIDEOCONFERENCE

SENTENCING HEARING

HELD BEFORE CHIEF JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

Office of the United States Attorney

BY: ELIZABETH ALTMAN

LAURA PRZYBYLINSKI FINN

Assistant United States Attorneys

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For the Defendant:

Federal Defender Services of Wisconsin, Inc.

BY: JOSEPH A. BUGNI

Madison Branch Office

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Also Present:

Alexander Kawleski, Defendant

Mariah Stieve, U.S. Probation Officer

CHERYL A. SEEMAN, RMR, CRR

Official Court Reporter

United States District Court

120 North Henry Street, Room 410

Madison, Wisconsin 53703

1-608-261-5708

1 (Called to order at 1:30 p.m.)

2 THE CLERK: Case No. 10-CR-25-JDP-1, the *United*
3 *States of America v. Alexander Kawleski*. Court is called
4 for sentencing. May we have the appearances, please?

5 MS. ALTMAN: Good afternoon, Your Honor. The
6 United States appears by Elizabeth Altman and Laura
7 Przybylinski Finn.

8 THE COURT: Good afternoon to you.

9 MR. BUGNI: Good afternoon, Your Honor. Joe
10 Bugni appearing on behalf of Alexander Kawleski.

11 THE COURT: Good afternoon to both of you. I'll
12 also note that Mariah Stieve is on the call with us. She
13 is the probation officer who prepared the presentence
14 report.

15 We were having some audio difficulties with my end of
16 some earlier proceedings and so I've got a different
17 microphone connected now and so I just want to confirm
18 that you can hear me okay. Ms. Altman, can you hear okay?

19 MS. ALTMAN: I can, Your Honor. Thank you.

20 THE COURT: Mr. Bugni?

21 MR. BUGNI: I can, Your Honor.

22 THE COURT: All right. Very good. So we're here
23 for sentencing and we're proceeding by video
24 teleconference because I have determined for the Court
25 that we can't proceed in person without imposing undue

1 risks on the participants in the case. But I think the
2 interests of justice compel us to move forward with
3 Mr. Kawleski's sentence despite that, but we can do it
4 this way only if he agrees to proceed this way.

5 So, Mr. Kawleski, do you understand that you've got
6 the right to appear before me for your sentencing?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: And you're willing to waive your
9 personal appearance and proceed by videoconference.

10 THE DEFENDANT: Yes.

11 THE COURT: All right. That's how we'll do it
12 then. I've got a lot of material in this case and so I'm
13 going to run down what I think are the main documents that
14 I have reviewed in connection with the sentencing to see
15 if I missed anything.

16 So I've got the presentence report. I've got
17 objections really from both sides, two installments here
18 from the defendant, which I will speak to momentarily.
19 And I've got an objection from the government and I've got
20 an addendum that summarized the objections. And then I've
21 got a revised presentence report and a sentencing
22 memorandum from both sides.

23 And I've got letters in support of Mr. Kawleski, so
24 thanks to his family members who took the time to write to
25 me. I appreciate having that input. And then I also have

1 Mr. Kawleski's written allocution.

2 So that's what I've reviewed. Let me know if you
3 think I have missed anything. I know there's a lot more
4 paper that was filed. I think I have reviewed everything
5 well beyond what I've cited here. But let's find out, for
6 sentencing purposes, if I missed anything. Ms. Altman,
7 anything on the government's side?

8 MS. ALTMAN: No, Your Honor. Thank you.

9 THE COURT: Mr. Bugni?

10 MR. BUGNI: No, Your Honor.

11 THE COURT: All right. Mr. Kawleski, I want to
12 make sure that you have read the presentence report and
13 reviewed it and the revised presentence report with your
14 attorney. Have you done that?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you have any other objections or
17 concerns with the presentence report? Mr. Bugni has
18 raised some to me which I will address in a minute, but
19 are there any other concerns that you have?

20 THE DEFENDANT: No, not that I can think of right
21 now. I mean, there was some things in the presentence
22 report, but I can't really think of them right now.

23 THE COURT: All right. I'm going to give you
24 another chance to speak before we're finished. So if,
25 during our proceeding, something occurs to you that you

1 want to speak to, you'll get the chance to do that.

2 Okay. So I'm going to adopt the facts in the --
3 well, let me ask this: There are certain factual
4 clarifications that were offered. Mr. Bugni, have those
5 been adequately reflected in the presentence report?

6 MR. BUGNI: They have, Your Honor, with one
7 exception. And I should have filed a letter this morning.
8 When I went over the addendum with Mr. Kawleski, he has
9 another cracked tooth that he was concerned about, and
10 that would be the only additional point to add to the
11 clarifications.

12 THE COURT: All right. We will make a note of
13 that and I'll ask Ms. Stieve to include a reference to
14 that in a future submission to make sure that all of
15 Mr. Kawleski's health concerns are addressed, if they
16 still need it, when he gets into BOP custody.

17 Okay. So I guess this is probably as good a time as
18 any -- well, let me just state this: I'm going to adopt
19 the facts in the presentence report as the facts on which
20 I will base my sentence. There's no plea agreement. But
21 in determining the defendant's sentence, I will take into
22 consideration the advisory sentencing guidelines and the
23 statutory purposes of sentencing that are set out in Title
24 18 of the United States Code at Section 3553(a).

25 So let me walk down the objections. And I believe

1 the best way to do this is to look at document 103, which
2 I think is Mr. Bugni's articulation of the objections that
3 remained outstanding after the revised presentence report.
4 Is that correct, Mr. Bugni?

5 MR. BUGNI: Yes, Your Honor.

6 THE COURT: Okay. All right. So it's a useful
7 setting out of the continued objections, so thank you for
8 that.

9 So, Mr. Bugni, the first issue is whether
10 Mr. Kawleski should receive credit for acceptance of
11 responsibility. The government has already told me it
12 wouldn't support the third level of reduction. The basic
13 framework here is that generally, if you go to trial,
14 you're not going to get credit, but that's not an absolute
15 rule if the defendant doesn't contest the underlying facts
16 that otherwise demonstrates acceptance of responsibility.

17 But when I judge that, I'm to look at pretrial
18 conduct, not just -- not post-trial conduct. So I got
19 Mr. Kawleski's expression of remorse in his written
20 allocution, but what pretrial conduct would you point to,
21 Mr. Bugni, that would indicate that Mr. Kawleski has
22 accepted responsibility?

23 MR. BUGNI: I would point to his apology to the
24 victim in I believe 2016 and again in 2018. In fact, this
25 is a personal matter between the family and he expressed

1 remorse and he apologized to her twice. The fact that,
2 you know, he believed he destroyed the flash drive in
3 2016, it sort of, "Look, I'm away from this." This isn't
4 someone who continued his criminal conduct after 2014.

5 As far as, you know, whether or not he pled guilty
6 right away or what other court proceedings, I don't have
7 that, Your Honor. But I do have that behavior that I can
8 cite to you showing this is somebody who, even before he
9 got caught, was remorseful. It's somebody who, you know,
10 turned away from the criminal conduct and put it behind
11 him.

12 THE COURT: I am not persuaded that Mr. Kawleski
13 has demonstrated acceptance of responsibility before
14 trial. This is not one of those unusual cases where,
15 despite going to trial, I think that granting credit is
16 nevertheless warranted. In fact, I think that a factual
17 component of the charge actually was disputed rigorously
18 even after trial and that was that he still had the flash
19 drive, disputed that he made that flash drive and tried to
20 put the creation of that flash drive on Tracey Brown.

21 And this is a case in which two minor victims had to
22 testify at his trial as young adults. And so not only was
23 the government put to the effort of the trial, the victims
24 were put through the hours of the trial as well. So this
25 is a case in which I think it's appropriate that there be

1 no credit for acceptance of responsibility.

2 The next issue is whether Mr. Kawleski should receive
3 an enhancement for incapacitating a minor. Application
4 Note 2 of the applicable guideline section says that it's
5 broadly applicable and it cites the fact that basically it
6 applies when the victim is incapacitated. And I think
7 that I don't know that I have to make the specific finding
8 that he incapacitated her for the purpose of conducting
9 the sexual assault, but it is definitely true that he
10 provided her the alcohol that led to her incapacitation
11 and then took advantage of the situation and sexually
12 assaulted her when she was unconscious. I saw the video.
13 I do not believe that she was conscious during the sexual
14 assault. So I will overrule that objection as well.

15 The next one is whether Kawleski should receive the
16 enhancement for sadistic conduct. This objection I'm
17 going to sustain. I agree that the sexual assault was
18 psychologically traumatizing to the victim, but that was
19 the kind of trauma that's collateral to virtually any
20 sexual assault of a minor by an adult or really sexual
21 contact with an adult. There's always an element of
22 trauma in a case like this.

23 But reading that enhancement for sadistic conduct,
24 that broadly would mean that it would apply in a vast
25 range of cases in which there is sexual conduct between an

1 adult and an older minor victim. I think if there is
2 penetration of a prepubescent minor, that is sadistic by
3 definition, but this is not a case in which I see the
4 conduct at issue here really was sadistic within the
5 meaning of that enhancement. So although I agree
6 psychological pain could constitute that kind of sadistic
7 conduct, this psychological pain was just collateral to
8 the fact of the assault anyway, so I will not apply that
9 enhancement.

10 So should Mr. Kawleski receive the enhancement for
11 being a parent or guardian. He was not literally a parent
12 or guardian, but part of his main argument here about the
13 context of these events was that he was in a marriage-like
14 relationship with his partner, Theresa, that he had a
15 family-like relationship with his own children that he
16 shared with Theresa, but that also he was in a
17 step-parent-like relationship with Amanda.

18 And so I think that it's somewhat inconsistent to
19 disclaim being in the position of a parent or guardian
20 with Amanda, given the importance of the relationship that
21 he had with Theresa and the fact that Theresa -- I'm
22 sorry, that Amanda considered Emma and Noah to be her
23 brother and sister.

24 This was a family, I agree with that, and I will
25 consider this in the context of that situation. Even

1 though it wasn't legally recognized as a marriage,
2 nevertheless, I think that the enhancement applies. Again
3 the application notes encourage broad application of that
4 enhancement.

5 Then we've got the argument that Count 16 should be
6 dismissed because it's a lesser included. Here's the
7 basic problem that I see with that: People have cited to
8 me the *Johnson* case out of the Ninth Circuit. That case
9 says that possession is a lesser included of receipt of
10 pornography and the Seventh Circuit suggested it might be
11 willing to embrace that position.

12 But those aren't the two crimes that we're talking
13 about. We are talking about production and possession.
14 And if we take, as we must in analyzing the multiplicity
15 issue under *Blockburger*, we take an elements-only analysis
16 and we look at the elements of the one offense compared to
17 the other to determine whether one is a lesser included.

18 And production and possession each have divergent
19 elements. You don't need to possess pornography to
20 produce it. You could produce child pornography by
21 engaging a child in lewd conduct for purposes of
22 transmission so that you never possess the representation
23 that is created. But to possess it, you have to have a
24 tangible representation or you have to access the
25 representation. And you don't have to possess it to

1 produce it and so each of them has an element that the
2 other does not.

3 So when I look at the *Johnson* case, it says, look, if
4 you're going to charge the lesser included, it has to be
5 based on a different factual predicate. We don't have
6 that problem here in the first instance because production
7 and possession are not lesser includeds of each other, so
8 possession is not the lesser included. So they're
9 separate crimes. They're not related in a greater and
10 lesser included issue. So I will not dismiss Count 16 as
11 being duplicitous. It's appropriate to convict on both
12 because they're not lesser includeds.

13 Okay. So those are the rulings on those enduring
14 motions. So the effect on the guideline calculation is
15 that there is -- I believe that the enhancement then
16 was -- that was a four-level enhancement I believe that I
17 sustained the objection to, is that correct, on the
18 sadistic conduct?

19 MR. BUGNI: Yes, Your Honor, that's correct.

20 THE COURT: Okay. So let's see.

21 MR. BUGNI: It won't actually matter, Your Honor.

22 THE COURT: It won't matter because we have 51.
23 If we take four away, then that's 47. We can only go as
24 high as 43. So the ultimate effect on the guideline is
25 immaterial.

1 MR. BUGNI: I'm sorry, Your Honor.

2 THE COURT: I'm sorry?

3 MR. BUGNI: We had 51 in the original --

4 THE COURT: Yeah.

5 MR. BUGNI: -- but I believe we have 47 in the
6 revised PSR. It would still only --

7 THE COURT: Reduce to a 43.

8 MR. BUGNI: That's right, Your Honor.

9 THE COURT: So we would reduce to 43 then. With
10 a criminal history category III, the advisory guideline
11 imprisonment range would still be life. And then given
12 the statutory maximum 30 years on the possession charge,
13 ten years on the -- I'm sorry, 30 years on the production
14 charge, ten years on the possession charge, gives us a
15 40-year statutory maximum which then becomes our guideline
16 calculation.

17 So, Ms. Altman, are you in agreement where we land in
18 the guidelines?

19 MS. ALTMAN: Yes, Your Honor.

20 THE COURT: Mr. Bugni?

21 MR. BUGNI: Yes, Your Honor.

22 THE COURT: Okay. All right. So that's as far
23 as the guidelines take us. I've got sentencing memoranda
24 from both sides, so you don't need to repeat those things,
25 but let me know if there is anything further that the

1 parties want me to consider before I ask if Mr. Kawleski
2 has anything to say. Ms. Altman.

3 MS. ALTMAN: Thank you, Your Honor. I will not
4 repeat anything hopefully or much in my sentencing
5 memorandum. I want to comment primarily on the sentencing
6 memorandum filed by Mr. Bugni and also about the
7 defendant. In the sentencing memorandum the defendant
8 says he should be getting punished for, quote, "getting a
9 16-year-old drunk and having sex with her," end quote, and
10 that this is otherwise isolated behavior.

11 The defendant's case and behavior in this case was a
12 lot of things: it was grooming, it was rape, it was sexual
13 assault, it was abusive conduct, it was exploitation, it
14 was forceable sexual penetration, all of those things.
15 What it cannot be called, under any stretch of the
16 imagination, is getting a 16-year-old drunk and having sex
17 with her.

18 As far as the claim in the sentencing memorandum that
19 the defendant has accepted beginning from the -- accepted
20 responsibility from the beginning, I know the Court
21 addressed it, but I think it bears repeating. The only
22 person who's accepted responsibility for Mr. Kawleski's
23 actions in this case is Mr. Bugni, and he has done so from
24 the beginning, at least as far as the conduct that's shown
25 in the video.

1 The defendant has continued to deny responsibility
2 for the actions in this case up to and including the
3 allocution that he filed yesterday in which he again
4 blames Tracey Brown, says that he burned the thumb drive
5 at issue, that this is something that she created. And
6 now, taking it one step further yesterday, saying for the
7 first time, at least that I recall, that she had been
8 threatening him to turn over this thumb drive since 2015.
9 So he's created this whole narrative, even as of
10 yesterday, with his allocution.

11 Touching on a few other things in the defendant's
12 allocution, everything that he says only amplifies the
13 points in the government's sentencing memorandum about his
14 history and characteristics. It seems to be primarily
15 about how his actions have affected him. The lack of
16 self-awareness in his allocution is staggering and is on
17 display in the very first sentence of his allocution where
18 he calls it, quote, "an unfortunate situation." This
19 isn't an unfortunate situation. He sexually assaulted and
20 raped a girl that he had a close relationship with that he
21 had been grooming for a period of time.

22 He claims to have made all of these changes after the
23 offense. That may or may not be true. It's hard to tell,
24 especially based on this allocution that he wrote, but
25 that's a very small part of this case. He continues to

1 challenge his conviction, as I've already indicated. He
2 blames Tracey Brown for all of these issues at this point.
3 He can't even admit that the victim was unconscious
4 because that doesn't seem to fit this narrative that he's
5 now trying to sell.

6 It appears, and I read this several times, I hope I'm
7 wrong, but it appears that he's now trying to say that the
8 conduct between him and the victim was somehow mutual. He
9 claims they leaned on each other. He told her that she
10 wasn't at fault and they mutually resolved to leave the
11 past behind them and move forward in an appropriate
12 manner. That's just offensive. That is beyond offensive.
13 If he's now trying to say that she was some willing
14 participant in this behavior and that they've decided to
15 move on more appropriately, he's got bigger problems than
16 even imagined when this case started.

17 The victim reported not even knowing that this
18 conduct happened. It wasn't mutual. She was passed out,
19 drunk, and he violently assaulted her. He raped her. And
20 if he doesn't get that, he's a tremendous danger to the
21 community. And if he does get that and he's just trying
22 to manipulate the Court into this narrative that he now
23 wants the Court to believe, he's still a danger to the
24 community.

25 He deserves to be out of commission for as long a

1 period of time as possible. And at that point, based on
2 I'm not dismissing the Court's earlier decision, that's 40
3 years and the government recommends that sentence, Your
4 Honor.

5 THE COURT: Let me ask a couple of follow-ups.
6 I'm somewhat surprised. I say only somewhat surprised
7 because I know that this has been traumatic for Amanda,
8 but I didn't get any witness or victim statements and so
9 I'm wondering if there is anything from the victims. So I
10 didn't get any corroboration of the apology and agreement
11 to move forward. But I even reviewed the trial testimony
12 and that really didn't touch on any of the trauma or the
13 impact of the crime on Amanda, although I could tell from
14 her demeanor that she was upset by the whole affair and I
15 know that she said that she wasn't aware of it and she was
16 upset when she found out about it. But I guess my
17 question is any input from the victim on any of this?

18 MS. ALTMAN: We did not get any victim input,
19 Your Honor, we didn't. We reached out to them. We sent
20 them notice. Neither one responded to either the
21 probation office or our office.

22 As far as the apology, I don't think it could have
23 happened because she didn't know about the conduct, so I
24 think that's just not even true. But to answer your
25 direct question, no, there's no victim impact.

1 THE COURT: All right. Then the other set of
2 questions I have is you cited the *Irey* case -- and for the
3 benefit of the court reporter, it's I-R-E-Y -- the
4 Eleventh Circuit case. I have to say, that case is quite
5 an outlier, both legally and factually, factually because
6 the defendant in that case engaged in very protracted,
7 ghastly conduct that involved a sadistic sexual assault of
8 at least 50 child victims, prepubescent victims, and so
9 that conduct is far beyond what we have in this case.

10 It's also an outlier in that it's one of those rare
11 decisions in which an appellate court reverses a trial
12 court's determination of a reasonable sentence. And so I
13 wanted to ask about the cases that you cite and try to
14 understand how I'm supposed to consider them, because even
15 Mr. Irey, as ghastly as he was, he only got 30 years.

16 And some of the other cases that were cited with some
17 very long sentences from the Seventh Circuit, those were
18 upheld as reasonable sentences. It wasn't that those
19 sentences were specifically endorsed; they were held to be
20 within the range of reasonableness. But those too
21 involved much more serious conduct and the distribution of
22 pornography through websites directed at people who are
23 interested in that kind of thing and I don't have that
24 distribution element here.

25 And the bottom line here is that Mr. Kawleski's

1 conduct, as bad as it was, and it was serious, just isn't
2 in the same league as some of those other sentences of a
3 hundred years or even 40 years in some of those other
4 cases.

5 MS. ALTMAN: Well, Your Honor, there are two
6 things. They're cited -- Irey is cited a lot for the
7 principles that, you know, we need to protect our children
8 and do whatever it takes to protect our children. And so
9 when you look at that and when you look at Mr. Kawleski
10 and what he's done and his current attitude, that remains.
11 We need to protect our children.

12 As far as how it compares to other sentences, I mean,
13 his conduct -- I mean, his conduct was bad. We don't know
14 how often he did it. Amanda reported that she woke up
15 other times feeling sore. I don't think that we can say
16 this is a one-time thing, particularly because had the
17 Court not dismissed the other charges, I mean, we have
18 however many charges of production now that he touched
19 them. In the shower videos he didn't. But it's an
20 extended course of conduct that he engaged in and I think
21 that that's something that the Court needs to consider.
22 It wasn't just a single incident.

23 THE COURT: I definitely will consider that. But
24 when I'm looking at points of comparison -- and honestly,
25 just let me tell you, my perspective is I'm very cautious

1 about looking at other cases that I can see only through
2 the appellate record and looking at the ultimate sentence
3 and I have a description of the offense conduct, but I do
4 not have the kind of rich information that I have when I
5 sentence somebody myself. So I'm very cautious about
6 looking at some other case where somebody else convicted
7 under the same statute gets an extraordinary sentence,
8 because I just don't know all of the information that went
9 into that sentence.

10 And so I understand your point that I could be upheld
11 as making a reasonable determination if I did impose the
12 statutory maximum here, partly because that's a guideline
13 sentence and so it's presumed to be reasonable for appeal
14 purposes, but that doesn't really guide me to what the
15 right sentence is in this case. And when I look at those
16 cases, I see very much more atrocious behavior in most of
17 them.

18 MS. ALTMAN: Well, I think, Your Honor, then if
19 you don't consider those other cases and you want to look
20 specifically at what this defendant did, and we do
21 encourage that in the sentencing memo -- I think it
22 says -- I know that it says "understanding that you're
23 sentencing this defendant for these actions" -- I think he
24 still warrants that type of sentence.

25 He engaged in -- I know he denies it, but it sure

1 seems like he's engaged in this conduct before with
2 multiple girls. He had a daughter who was coming into
3 that sort of age. I'm not saying he did anything at all
4 with her, but that was possibly coming up next. He took
5 numerous videos of the victim in this case. He seemed to
6 be obsessed with her. He created videos about her. He
7 continues to deny his responsibility. He has complete
8 lack of self-awareness. He's only interested in himself
9 and how this has affected him and his reputation.

10 So if you disregard all of those other cases and just
11 look at this case and what you have in front of you and
12 the things that you should look at, he still warrants a
13 really really really long sentence.

14 THE COURT: All right. Mr. Bugni.

15 MR. BUGNI: Thank you, Your Honor. I think I'm
16 going to begin with where Ms. Altman began and that is my
17 sentencing memo. I was a little concerned if I would have
18 actually written that in the sentencing memo, because it
19 has a tin ear, but I'd like to read what I actually wrote
20 in my sentencing memo. "Getting a 16-year-old drunk,
21 having sex with her, and then later secretly videotaping
22 her in the shower is absolutely repugnant." That's my
23 quote. That's exactly what I said when I wrote it on page
24 2. And that's the way this case is, it's very difficult
25 and it's very atrocious. It is atrocious. I've never

1 backed away from that.

2 But where do we punish a person who's engaged in this
3 and I think the Court has asked. We can look at other
4 circuit cases, we can look at court of appeals cases. But
5 I can just look at the other cases that I've appeared
6 before you with, but I don't really think that's very
7 helpful, like John got X and so I want X minus two or X
8 plus two.

9 But I would look, Your Honor, at Steiskal, the man
10 raped a 10-month-old and then sent it to another minor, 15
11 years. I'd look at John Gilbert, had sex with a
12 16-year-old multiple times, arranged gang bangs,
13 videotaped it, sent it to other people and then also
14 videotaped himself with another girl or took photos, 10
15 years. I'd look at Raimondi, who molested a
16 seven-year-old, 12 years. I'd look at Hosler, who
17 traveled here from Texas to have sex with a 10-year-old
18 that he was going to purchase -- or 12-year-old, sorry,
19 that he was going to purchase and then videotape it, 10
20 years. So when you look at like what's a reasonable
21 sentence here --

22 THE COURT: I would add to that inventory Leroy
23 Bond, 25 years.

24 MR. BUGNI: I think that was a little
25 distinguishable, Your Honor, and I would put that

1 distinguishable on three levels. One, he was very scary
2 in that he had done it to multiple girls. There was the
3 seduction there of the -- I don't know the right -- the
4 girl with mental disabilities. That was a real driver
5 there. You know, she was 14, she was slow. I don't
6 remember if she had Down syndrome or what it was, but she
7 was mentally -- she had mental impairments. There was
8 also getting the girl drunk and taking her virginity at
9 the party. That was just atrocious. And then there was
10 the escalating abuse there as well as he was out of
11 control. So Leroy Bond, at 25, he's very distinguishable.

12 And, Your Honor, when I wrote in my sentencing memo
13 that if he would have been caught in 2015 or 2014 or 2013,
14 I think you would have really -- I think you probably
15 would have gone north of 15 years, I really do. I've
16 appeared before you enough and I think Leroy Bond kind of
17 lingered in my head. I saw this as like a 17-year case.
18 I'd still ask for 15, but I think that would be
19 reasonable. I would say that in *Leroy Bond* I asked for
20 18. I asked for an entire -- you know, I think I called
21 it like an entire lifetime as a juvenile.

22 But here you have Kawleski turning the ship. And I
23 do not discount that he was a dangerous, out-of-control
24 person in 2013 and 2014, but 2015 he makes a change. And
25 we can look at this circumstance of specific behavior that

1 is spanning that time -- huge alcohol issues, a
2 deteriorating relationship and just creeping behavior,
3 sexually inappropriate behavior -- all of it terrible and
4 that calls for certain punishment. But now we've removed
5 it five years -- really seven years now if we take the two
6 years, you know, we're past this -- and we have a
7 different person and you're going to drive home a message.

8 And I hope you at least acknowledge the instrumental
9 goals of sentencing. This isn't really about having to
10 keep society safe as much as a Leroy Bond case and it's
11 not about deterrence. This isn't somebody who we have the
12 inklings that he's going to go back to this sort of
13 behavior. I just don't see that.

14 I agree that there's troubling behavior and it's
15 criminal behavior in 2013 and 2014, but after that you
16 have that complete absence. If he really is that immersed
17 in this, then there's going to be fragments of it.
18 There's going to be something that would show up in all of
19 the downloads and all of the investigation that the police
20 did, something -- some interest in children, some other
21 victim speaks out, something -- but it's not there. And
22 it goes to the credit of his consistent story about what
23 was going on in his life.

24 Now, Your Honor, I think lingering in all of this is
25 whether or not you believe him, if you believe him that he

1 threw out the flash drive. I can only say that's been the
2 story from day one. Do you believe him that he apologized
3 to Amanda? Like that's been his story since day one. "I
4 was out there, a cigarette, she was going to move back
5 in." You know, "It was terrible. It was the worst time
6 of my life. I've apologized to her twice," and they
7 resolved never to speak of it again.

8 Now, there are two aspects of it. You can look at it
9 and say is it only this one time that I'm punishing, this
10 one time that he got her drunk and sexually assaulted her,
11 or was there something greater going on, something even
12 more nefarious, but something that he also turned his back
13 on, and that's what the more troubling is. Because if
14 he's apologizing twice, you're apologizing for something
15 that somebody has no memory of, you're apologizing for
16 something that you know deep down what you did is wrong
17 and another person knows what you did is wrong, that's
18 what he's been consistent in and that actually fits with
19 everything else in this case.

20 I only cite two other parts of it, Your Honor. One,
21 the last time we have anything on that flash drive is 2015
22 and that was with -- that was early 2015 with the adult
23 pornography that had been put on there. Second, we have
24 someone who has every aspect of desiring to be an
25 exceptional father. And I'm not saying like -- he had a

1 stepfather relationship with Amanda. And I agree that's
2 just horrendous. It's so frickin terrible what he did.
3 But you have this complete immersion in his children's
4 life and everybody agrees about that, that like this is
5 somebody who put away the alcohol, who put away all the
6 distractions, who put away those aspects of it and was
7 trying to be something for them in the midst of now being
8 a single father.

9 And you have to ask yourself, is there the
10 possibility that he was able to right the ship without
11 getting caught and without that punishment. And then ask
12 yourself the deeper question, and I think this is what
13 drives it, Your Honor -- I don't know what you would give
14 if you could go underneath 15 years. I don't even know if
15 you're going to go under 15 years. I'm hoping you are --
16 but could he have righted that ship and, if so, what would
17 he feel in the midst of having that brought back up.

18 He's turned his life away from the very worst thing
19 that he ever did, that anyone could ever do, put it behind
20 him, and then it's brought out and he's facing the
21 consequences as a new man. And in facing the consequences
22 as a new man, this is what we have: an apology, we have no
23 other evidence of child pornography, we have nothing else
24 touching that flash drive, and we have his remorse.

25 And one other thing -- I wish I would have said this

1 when you said the acceptance of responsibility -- now part
2 of it is this man has cried more and shown more remorse,
3 and not in a manipulative way, but in a "Holy cow, the
4 whole world is crashing down on me" way. That's been
5 consistent through the bond hearings, through every aspect
6 of this, through the trial. You saw it. We had to
7 continue trial for three hours so he could compose
8 himself. This is somebody who's racked with his life that
9 he thought he had turned away from and the life he was
10 going towards is completely ripped away.

11 I would add only one other comment to what you had
12 said earlier. Your Honor, I've tried enough cases before
13 you. You know I wouldn't want to put a victim on the
14 stand. We offered to stipulate to have, you know,
15 whatever they needed. We did not want them on the stand.
16 And it was not because it would further our defense or
17 take away from our defense. Our defense was what it was.
18 We won 15 counts or 14 counts. But this was not something
19 that he took any joy in having them testify or there was
20 any other aspect to it. He wept throughout that.

21 Your Honor, you're looking at somebody in a very rare
22 position: being caught six years after the worst thing he
23 ever did. And I ask you, when you're judging the moral
24 and the instrumental goals of sentencing, to think deeply
25 about that, to think deeply about like has this man really

1 changed and does it need to be a day over 15 years. I
2 think that somewhere along the line he's paid his debt and
3 it doesn't have to be 181 months. 180 months more than
4 fits that bill.

5 THE COURT: Let me ask you a couple of questions.
6 You said that Mr. Kawleski has turned his life around, put
7 away the drinking. But in his residence, after the
8 search, they found marijuana and cocaine in his residence.

9 MR. BUGNI: Yes, sir.

10 THE COURT: He didn't -- you could say it got
11 worse. Now that he doesn't drink, he uses hard drugs.

12 MR. BUGNI: He did admit to using cocaine with
13 Tracey Brown I think twice in the PSR. I don't have the
14 exact paragraph. You know, I tend to think -- I think
15 cocaine is a bad drug, but I would think drinking out
16 blackout drunk is a little bit more dangerous. As far as
17 marijuana goes, he shouldn't have had marijuana. But I
18 meant it on the spectrum of he put away the alcoholism
19 that was defining his life and getting drunk with a
20 16-year-old, doing that behavior, also like ramming his
21 car into someone.

22 THE COURT: As I understand your -- the core of
23 your argument is that this was aberrant behavior and it
24 was driven by a dark moment in his life. But you have to
25 look to 2009. He's got a conviction for sexual contact

1 with a minor in 2009. He denies it now, but he pled
2 guilty to it. And so I know there's an excuse for it, he
3 offers a justification, but that is a huge dent in his
4 credibility.

5 MR. BUGNI: Yes, that is. And I'll just -- can I
6 make two observation that I probably should have done
7 earlier? One, he pled no contest. It's different than
8 federal court where you've got to eat it and you've got to
9 say what you did. You know, you can say, "I plead no
10 contest, Your Honor."

11 Second, if the government -- you know, the
12 government's sentencing memo is really "Look, 2005 he did
13 this. She wrote it in her diary." But when I went to the
14 discovery this morning, and they say it in their
15 sentencing memo, "She ripped out the pages." But then in
16 2009, the friend who, you know, accused him said, "I saw
17 the diary. I saw that." Well, if, in 2005, the cops
18 couldn't find it, I don't think in 2009 that victim
19 found it.

20 But I'd also put in this: If those things happened,
21 what is he doing getting a fourth degree sexual assault?
22 What is he doing getting two years probation and
23 conditional jail time, meaning he didn't even actually
24 have to sit in jail? Like if those things really
25 happened, the DA up there knows how to hit him. The DA

1 there has to answer to the people. And if the DA really
2 believed that he had done these things, that he was that
3 predator, then he would have actually -- he or she would
4 have actually really hit him.

5 Now, I'm not saying that he's the most credible
6 person, that, you know, you're going to believe him to the
7 bank, but his story does make sense and there is a lot of
8 evidence to support it.

9 THE COURT: Well, there's also evidence going the
10 other way, because in 2009 Amanda corroborates the
11 friend's claim of victimization.

12 MR. BUGNI: Your Honor, that's what's in the
13 police report. If that really held up, then what's that
14 DA doing? Why not actually push that? There are lots of
15 cases --

16 THE COURT: Because cases like that are hard to
17 win.

18 MR. BUGNI: I don't know if they are that hard to
19 win. If the facts were that clear, then that's not a hard
20 case to win. That's whether did he actually come in
21 there. "I have two witnesses who say he did."

22 THE COURT: All right. How about this: He didn't
23 want to put the victims on the stand to have to go through
24 it.

25 MR. BUGNI: There could have been lots of

1 reasons, Your Honor. But if he was that bad a dude, then
2 you would actually push it and you would do it. And us
3 hypothesizing now, you know, about whether it did or
4 didn't happen, how much more of a sentence does that
5 aggravate? If this would have been close together and
6 there hadn't been that six-year break, I'd say yes, Your
7 Honor, you have legitimate concerns. But those legitimate
8 concerns I think are wiped away around year '13, '14, '15.

9 But is this aberrant behavior? Maybe even within a
10 time period of his life, from 2009 to 2014, I give you
11 that. He's hell on wheels. He's terrible. But 2014 to
12 2019 he's doing great, five years of entrenched every day
13 getting up and going to work, five years of taking care of
14 those two kids. That speaks as loud or louder than those
15 five years of aberrant behavior that are really rooted in
16 a dysfunctional relationship and alcoholism.

17 THE COURT: Anything else?

18 MR. BUGNI: Unless you have other questions, Your
19 Honor, I think Mr. Kawleski has a few words.

20 THE COURT: Okay. Mr. Kawleski, you've got the
21 right to address me before I decide on your sentence. You
22 don't have any obligation to say anything, but I'd be
23 eager to hear from you, so go ahead.

24 THE DEFENDANT: Your Honor, I guess I don't
25 really know what to say. I mean, I want to say I'm sorry

1 to everybody, Amanda and Kya, Noah and Emma -- I love you
2 more than everything in the world -- my mom, Keith, Ethan
3 and Evan. I miss you all so much.

4 I can't deny, you know, what I did. I feel
5 absolutely disgusted by it. And I've been trying to get
6 past that in working to put that behind me. But I'm
7 sorry, everyone, I'm sorry. I don't know what else to
8 say. My mom, Ethan, Noah and Emma, my dad too, I love you
9 all so much. I'm sorry I let all of you down. I tried.
10 I tried so hard to get away from that. That's why it's
11 hard for me to talk about it now, because I hate that part
12 of me. I don't know what else to say.

13 THE COURT: All right. Anything else or are you
14 finished?

15 THE DEFENDANT: No, I'm -- thank you.

16 THE COURT: All right. I'm going to take a
17 recess here for a few minutes and then we'll come back and
18 finish up the sentencing, so just hold on for a few
19 moments. Thank you.

20 (Brief recess.)

21 THE COURT: All right. I'm going to organize my
22 comments along the lines of the 3553(a) factors. We've
23 discussed the case extensively. We've all been dealing
24 with it for a long time. I think we're all very familiar
25 with the basic facts, but I have to start out with the

1 characterization of the offense.

2 This is a sexual assault of a minor. She was
3 unconscious. She was in a stepdaughter-like relationship
4 with the defendant. That is a very serious offense. And
5 the insult to the victim was greatly amplified by the
6 defendant making a video recording of it and by his
7 preservation of that video for an extended period of time,
8 even if I credit his explanation that he thought he got
9 rid of it in 2015. I'm skeptical of that because of the
10 existence of the flash drive that was charged in this
11 matter.

12 I don't have very direct evidence of the trauma to
13 the victim. I think it was traumatizing. I can
14 understand the betrayal that the victim justifiably feels.
15 Mr. Kawleski should have been her protector. They were
16 all going through a traumatic period when Theresa was
17 abusing alcohol and was in a very bad state. Amanda
18 should have been able to lean on Mr. Kawleski and he
19 betrayed that very fundamental trust. It's really -- it
20 is an atrocity, I have to agree with that, but I don't
21 have further statements about the trauma to the victim. I
22 recognize that it's there, but I don't have the details
23 there.

24 I will observe that there was no distribution of the
25 video, which sets this case apart from many of the others

1 that garnered sentences of several decades in which
2 somebody not only went through the kind of experience of
3 being sexually assaulted and photographed, but then the
4 photographs were distributed widely. So that is a very
5 big difference between this crime and the many that are in
6 the cases that were cited to me.

7 Turning to the defendant, I think I need to make this
8 observation, that he is not a pedophile. He is not
9 attracted to prepubescent children. And that puts him in
10 a different category because pedophilia is a much more
11 intractable disorder and therefore it poses a greater
12 threat to more vulnerable victims.

13 And so I think it's important when Mr. Kawleski says
14 he doesn't want to be lumped in with the more violent
15 pedophiles. He has a point. He's not in the same
16 category as some of the offenders that are in the other
17 cases who have sexually abused prepubescent children, you
18 know, some very young ones.

19 But that's not to diminish the risk that the
20 defendant poses because of his sexual interest in underage
21 girls. I've got other offenders that I've sentenced and
22 have to supervise and an interest in underage victims is
23 itself an enduring difficulty that poses a great risk to
24 vulnerable victims, not as vulnerable as those that are
25 the objects of the pedophile's attention, but it's just --

1 it's a different category. It's still a problem.

2 As I said, the defense's main argument is that the
3 crime was an aberration from a dark period. I'm just
4 simply not completely persuaded by that. I don't find
5 Mr. Kawleski really an entirely credible historian. I
6 don't begrudge him his degree of self-pity. I think it
7 would take an act of super-human selflessness not to think
8 about what's in his future when he's facing a 15-year
9 mandatory minimum and a guideline sentence of 40 years.

10 So I understand his regret over the entire situation
11 and the impact that it will have on him and his family.
12 That doesn't mean that he doesn't have remorse over it.
13 And I think it's very understandable that a lot of what
14 he's concerned about is what is happening to him or what
15 has happened to him.

16 It's important to just make it crystal clear,
17 however, that we are only here in this unfortunate
18 situation because of his conduct. He is the one that put
19 us all here. He put the victims here, he put all of us
20 here, he put his family here, he put his children here.
21 It's all on him. He is the only person who really did
22 anything wrong and really bears any responsibility for
23 this.

24 And he can resent Tracey Brown for bringing that
25 evidence to the police. But whatever her motivations are,

1 she brought the truth to light.

2 The defendant acted on his attraction to minors over
3 a period of years. I think there's pretty good evidence
4 of some sexual touching of Amanda as early as 2005. But
5 we've got the prior offense to another victim in 2009. He
6 pled to it, he pled no contest. And he denies it now, but
7 I think there's pretty good evidence to believe that that
8 took place.

9 And then we've got the sexual assault of Amanda. But
10 then we've got the surreptitious videos that were made
11 over a period between 2013 and 2014. And he manipulated
12 those videos and the video that he made of the sexual
13 assault of Amanda and preserved them at least until 2015,
14 and that's crediting his purported destruction of them.

15 And so he wasn't convicted of any federal crime on
16 the basis of the bathroom videos, but it demonstrates a
17 couple of things. One, this is an enduring pattern of
18 misconduct driven by a sexual interest in underage girls
19 and it demonstrates his complete willingness to take
20 vulnerable people close to him, who depended on him, and
21 use them for his own purposes, either without --
22 completely without their awareness. It is an extremely
23 manipulative and heartless thing to do.

24 And so to me, I have a hard time accepting that this
25 was just an aberration that was driven by a breakup. I'll

1 also note this: Going through a bad breakup and having the
2 trauma of having a person that you love kill themselves
3 through alcohol abuse is very traumatic and it might lead
4 one to their own drug abuse. But the expression of that
5 trauma of his own to turn to sexual abuse of his
6 stepdaughter or the person in his stepdaughter-like role
7 is really atrocious. I don't find that really much of a
8 mitigating factor at all. She was going through a trauma
9 at the same time. And as far as I'm concerned, it appears
10 that that's part of what he took advantage of.

11 The crime did go undiscovered for several years and
12 he claims to have turned his life around. I agree that
13 there's no evidence of any further sex offenses after --
14 in the last few years and so I'm not going to speculate
15 that there were other victims. I have absolutely no
16 evidence of that.

17 But as I pointed out, when he was arrested, there was
18 cocaine, drug paraphernalia, marijuana. And substance
19 abuse is offered as one of the drivers of his misconduct
20 of his crimes in the 2013 to 2015 range because of the
21 difficulties he was going through. Well, his substance
22 abuse is going, you know, going forward with other drugs
23 and so I think that represents a continued risk factor.

24 As I said, I don't hold it against him that he
25 expresses regret and concern for his own well-being

1 because of the punishment that he's facing. I take it --
2 I do believe that he sincerely regrets that what he did,
3 but that doesn't mean that he's not capable of repeating
4 it.

5 So I have to come up with a sentence that serves the
6 needs of sentencing. I agree with Mr. Bugni that
7 promoting respect for the law, providing just punishment
8 and reflecting the seriousness of the offense is a primary
9 driver of the sentence here. It's not mere
10 vindictiveness. I think it's part of justice because it
11 reflects the harm to the victims and demonstrates that the
12 crime has been taken seriously. The sentence does have to
13 be a fair one so it's not out of line with the offense
14 itself and I will acknowledge that the mandatory minimum
15 is itself quite a long sentence.

16 I'm not persuaded by Mr. Bugni's argument though that
17 deterrence is not a factor here because I do believe that
18 looking at the evidence in the case as a whole, there's a
19 strong indication that Mr. Kawleski is attracted to
20 underage girls and that he's acted on it in the past and
21 not just in the occasions that we saw recorded in the
22 videos that were presented.

23 And so I think that there is a need for specific
24 deterrence, which dovetails with the consideration of
25 whether there's a need to protect the public. My concern

1 that he has this interest that he's acted on in the past,
2 regardless of his regret of his crimes, means that I think
3 there's a concern that he might reoffend. I am not at all
4 persuaded that this is a case in which deterrence is
5 irrelevant.

6 Sex offender treatment is available in prison just
7 like it's available outside of incarceration, so the need
8 for treatment provides no basis for not imposing a term of
9 incarceration. He can get the treatment that he needs in
10 prison. Sentences available require me to impose a term
11 of incarceration of at least 15 years, so the term is
12 really what is at issue.

13 Let me say a few words about the guidelines. I've
14 said it before, I'll repeat it here again: I disagree on
15 policy grounds with the pornography guideline for two
16 reasons. It's not driven by empirical research on the
17 historical practices of sentencing; it's driven by
18 congressional concern about the seriousness of child
19 pornography.

20 Everybody in the world agrees that it's a serious
21 offense, but they are mandating that the sentences be
22 driven by the mandatory sentences that they've -- the term
23 of incarceration. The maximum term and the mandatory
24 minimum terms doesn't mean that those sentences are going
25 to be effective at all. And there's no empirical research

1 that suggests that these guideline sentences have been
2 vetted in any way or verified in any way to actually be
3 effective deterrence and so it really is an aberration in
4 the way the guidelines are usefully developed from
5 historical sentencing practices.

6 I also disagree with the guidelines' focus on general
7 deterrence. I think that, as a general matter, I have
8 qualms about whether there's any good evidence that
9 criminal activity is really subject to deterrence on the
10 basis of the length of sentence. All of the research that
11 I have tracked and followed suggests that the certainty
12 and swiftness of punishment has a deterrent effect, but
13 the actual sentence length really does not.

14 There's recent study from the Sentencing Commission
15 trying to correlate recidivism and length of sentence and
16 they came up with the barest of correlation that suggests
17 that longer sentences are a slight specific deterrence.
18 There's nothing to support the idea of general deterrence
19 other than a general idea that criminals engage in some
20 sort of cost-benefit analysis in which they factor in the
21 length of sentence they might receive in their conduct.
22 Well, I think this case demonstrates a pretty good example
23 of how the individual decision-maker just doesn't engage
24 in that kind of decision-making, so I don't think the
25 sentence I impose here today will have the slightest

1 impact on anyone else.

2 I do think that it's important to send a message that
3 we have taken the crime seriously to reflect the victim's
4 experience and that we take it seriously, but the idea
5 that this will have an actual deterrent effect on some
6 other person who's going to sexually assault someone I
7 think is very unrealistic.

8 I'll also note this, that the pornography guidelines
9 are very concerned with the pornography market and that's
10 just not a factor here, because there was no distribution
11 of the pornography in this case, so this isn't a case in
12 which we're trying to accomplish drying up the pornography
13 market by sentencing Mr. Kawleski.

14 The sentencing disparities I think really are an
15 important factor here because in the absence of useful
16 guidance from the guidelines themselves, I do have to look
17 at comparable cases and sort of see what makes sense, what
18 seems fair, because it's appropriate to consider other
19 victims.

20 And I will note that I thought of both Mr. Bond and
21 Mr. Gilbert as points of comparison because they involved
22 teenage victims. And Mr. Gilbert really got a very short
23 sentence for his conduct. Partly it's driven by factors
24 that aren't really the offense itself, but the individual
25 characteristics of the defendant. But he got ten years.

1 Mr. Bond got 25 years.

2 I think I disagree with Mr. Bugni that the cases are
3 so remarkably different. There are of course points of
4 distinction with all of these cases. But just in terms of
5 rough measures, I think I've got to be -- if Mr. Bond gets
6 25 years, I don't think it would be appropriate for
7 Mr. Kawleski to get 40 years.

8 Restitution I don't believe is an issue here because
9 I've got to give him at least 15 years, so I don't think
10 whatever extra time that I add to it would affect the
11 likelihood of any restitution being paid.

12 So when I balance all of those factors, I think that
13 I tried to slot Mr. Kawleski into as appropriate a spot in
14 the spectrum of child pornography defendants that I have,
15 I think a sentence of 18 years is appropriate. I think
16 it's more than the mandatory minimum and it's driven
17 upward by his history of a prior sex offense and the
18 enduring nature of the offense conduct that I have here:
19 That he preserved those photographs, manipulated them and
20 kept them -- or the videos, I should say.

21 If there were a more robust statement of
22 victimization, if the crime itself were even more
23 catastrophic than I think it is, I might have been
24 inclined to go longer. And again I don't mean to diminish
25 the experiences of the victims. I want them to feel that

1 justice has been done as well. That's an important part
2 of what I'm trying to accomplish here today.

3 But I hope they understand they did nothing wrong and
4 I hope that they move on and recognize that their being
5 taken advantage of by Mr. Kawleski should be a small part
6 of their lives going forward. Unfortunately, it is often
7 not the case, that it ends up with an enduring inability
8 to trust people because someone so close to you has
9 betrayed a trust so important, as Mr. Kawleski did, but I
10 hope that they can keep it in perspective and move
11 forward.

12 So the sentence I impose is 18 years of
13 incarceration. That will be followed by 20 years of
14 supervised release. A long period of supervised release
15 is necessary to make sure that Mr. Kawleski doesn't act on
16 his attraction to teenage girls again and so I impose a
17 long period of supervised release. But I think 20 years,
18 combined with the period of incarceration, will be
19 sufficient to protect the public.

20 Ms. Altman is correct that nothing is as protective
21 as incarceration. But I believe that the 18 years of
22 incarceration is an appropriate period to have that kind
23 of protection and 20 years of supervision provides the
24 remaining reduction of the risk.

25 So we haven't gotten any specific requests for

1 restitution. Mr. Bugni presents in his brief that the
2 offense was committed before the effective date of the
3 statute that would require the mandatory restitution.

4 Ms. Altman, do you agree with that? Is that off the table
5 now?

6 MS. ALTMAN: I do agree with that, Your Honor.
7 And I would also add, even if it were post statute,
8 without a request, the mandatory doesn't apply.

9 THE COURT: All right. And so I don't believe
10 I've got even a suggestion that I've got restitution
11 coming and so I don't see any need to order restitution
12 then. Is that correct, Ms. Altman?

13 MS. ALTMAN: That's my understanding, Your Honor.

14 THE COURT: Okay. So I will order no
15 restitution. Let's see. Might as well address the
16 objections to the conditions of supervision. The bottom
17 line is that I think they're all justified and there are
18 no prohibitions of anything that Mr. Kawleski might
19 actually want to do, like travel outside the district.
20 It's just that he has to disclose it and get approval.
21 And so, for example, I won't overrule that one because I
22 think it's a very important part of monitoring of most
23 defendants, but particularly one with who's conduct is
24 surreptitious. And so I think knowing where Mr. Kawleski
25 is I think is an important part of supervision, so that's

1 overruled.

2 Concerning Condition No. 10, I think that's the work
3 as an informant. The only way that Mr. Kawleski could
4 work usefully as an informant, it seems to me, is in an
5 investigation of a child pornography offense. And if that
6 would happen, I would want to know about it, I would want
7 a supervising officer to know it, so there is no reason
8 not to impose the condition that he not work as an
9 informant without getting approval first.

10 The restrictions on his devices, I think that in this
11 day and age it's almost necessary as a condition of life
12 that you have a device that records video and audio and I
13 do not mean to prohibit this from Mr. Kawleski. But just
14 as it's almost an unavoidable feature of modern life, it
15 also unavoidably provides Mr. Kawleski the opportunity to
16 reoffend.

17 And so I do not anticipate and expect that he will be
18 deprived of normal existence in the modern world after his
19 term of incarceration, but I do think that it's critically
20 important that if he has audio or recording devices that
21 we know what they are and so I think that's an important
22 point of supervision.

23 I will overrule the objection to the polygraph.
24 They're not admissible as evidence in court, but they are
25 a useful supervision tool. To put it really succinctly,

1 it keeps people under supervision for sex crimes honest if
2 they have to face a polygraph examination and so I think
3 that is an appropriate condition as well. The conduct was
4 localized to Amanda and her friend on the shower videos,
5 but we had a prior offense that he pleaded guilty to as
6 well and so I'm going to recommend that. I'm going to
7 impose that condition as well.

8 At this point I'm not going to limit it to female
9 minors. I agree there's no suggestion that he has any
10 interest in boys. But that gets to, in my mind, a very
11 fine-grained distinction that if you're involved with
12 activities with minor boys, it's quite possible that
13 somewhere in the area minor girls will be there, too. And
14 again there's no prohibition, absolute prohibition, but it
15 requires disclosure, consent and approval.

16 And Condition No. 21, the same logic applies to
17 Condition No. 21 about work where there are children under
18 the age of 18, so that objection is overruled as well.

19 I will ask whether there are any further objections
20 and whether Mr. Bugni and Mr. Kawleski would like me to
21 read the rest of the conditions into the record.

22 Mr. Bugni.

23 MR. BUGNI: No, Your Honor. We would waive
24 reading and we have no further objections other than those
25 previously stated.

1 THE COURT: All right. Mr. Kawleski, I'll say
2 two more things about the conditions. They can be
3 adjusted. During your supervision, if you make a motion
4 to the Court, we will reconsider those conditions at the
5 time or before you begin your supervision. The government
6 or the probation office also can make a request to modify
7 the conditions, so they can be changed.

8 I'll also say this, that supervision is not designed
9 to trip you up and send you back to prison. It's there to
10 monitor your compliance with the conditions and to ensure
11 that you engage in a law-abiding life, but it is not
12 designed to trip you up and send you back to prison. So I
13 hope you'll undertake your supervision with that
14 perspective as well.

15 Drug testing is addressed in Condition No. 14.

16 It is adjudged that the defendant is to pay the
17 mandatory criminal assessment penalty of a hundred dollars
18 per count, in the amount of \$200, to the clerk of court
19 for the Western District of Wisconsin immediately
20 following sentencing.

21 I do find that the defendant does not have the means
22 to pay a fine without impairing his ability to support
23 himself upon release from custody, so I impose no fine.

24 I will grant a final order of forfeiture for the
25 property seized from the defendant as reflected in the

1 forfeiture order.

2 And I think the special assessment, was that also
3 past, post, the commission of this crime?

4 MS. ALTMAN: Yes, Your Honor.

5 THE COURT: All right. So there's no need to
6 consider the \$5,000 assessment. I note that Mr. Kawleski
7 is at this point indigent as well.

8 All right. Probation should notify local law
9 enforcement agencies and the state attorney general of the
10 defendant's release to the community.

11 And, Mr. Kawleski, you've got the right to appeal
12 your conviction if you think your conviction was somehow
13 unlawful or incorrect. You've got the right to appeal the
14 sentence I've just imposed if you think the sentence is
15 contrary to law in some way. But if you want to appeal,
16 you have to do it within the deadlines, and that means
17 within 14 days of entry of judgment in this case or within
18 14 days of any appeal by the government if the government
19 were to appeal.

20 And if you can't afford the filing fee for the
21 appeal, you can apply for leave to appeal
22 in forma pauperis, which means without paying the filing
23 fee. And if you cannot afford an attorney, you can apply
24 for court-appointed counsel to represent you in the appeal
25 at government expense.

1 I will recommend that you be afforded prerelease
2 placement in a residential reentry center with work
3 release privileges. I will also recommend that you
4 undergo sex offender treatment programming and I will also
5 recommend that you participate in vocational programming.
6 I think that will help you make your way in the world
7 after you have completed your sentence. I'm recommending
8 that because I don't see a really well-defined skill set.
9 I know you were employed, but I think the development of
10 additional vocational skills I think would be useful to
11 you, because you will face the additional burdens of
12 entering the job market as a felon.

13 So with that, I think we have completed everything,
14 but let's check in. Ms. Altman, is there anything else we
15 have to address?

16 MS. ALTMAN: No, Your Honor. Thank you.

17 THE COURT: Mr. Bugni, anything else?

18 MR. BUGNI: Two things, Your Honor. Would you be
19 so kind as to recommend RDAP as well with the vocational
20 training?

21 THE COURT: I will also recommend the substance
22 abuse assessment and appropriate treatment along with
23 RDAP, if he qualifies and he's interested.

24 MR. BUGNI: And the second thing, Your Honor, I
25 never know if this actually helps at all, but Mr. Kawleski

1 hasn't seen his children in two years. If we could just
2 have a recommendation of within 500 miles. I never know
3 if it really helps, but I'm sure it would alleviate the
4 family's concern.

5 THE COURT: I will recommend that Mr. Kawleski be
6 placed as close as possible to his family, consistent with
7 his security and his programming needs, but I would like
8 him to be as close as possible to his family. I think the
9 BOP does consider that, but I will add my endorsement to
10 it as well.

11 MR. BUGNI: Thank you, Your Honor.

12 THE COURT: All right. And, Ms. Stieve, is there
13 anything else you think I should address?

14 OFFICER STIEVE: No, Your Honor. Thank you.

15 THE COURT: Thank you all.

16 (Adjourned at 2:49 p.m.)

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1 I, CHERYL A. SEEMAN, Certified Realtime and Merit
2 Reporter, in and for the State of Wisconsin, certify that
3 the foregoing is a true and accurate record of the
4 proceedings held on the 28th day of January, 2021, before
5 the Honorable James D. Peterson, Chief Judge of the
6 Western District of Wisconsin, in my presence and reduced
7 to writing in accordance with my stenographic notes made
8 at said time and place.

9 Dated this 2nd day of March, 2021.

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15 _____ /s/

16 Cheryl A. Seeman, RMR, CRR
17 Federal Court Reporter
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